

REMARKS

Independent claims 19 and 29 have been amended to delete multiple limitations and to move some of those deleted limitations to dependent claims or to new dependent claims 41 and 42. The amendments also provide clarification regarding connection to the network and the fact that the first set and the second set of independent stores may be associated indirectly to the supplier master contracts, for example by means of distributor contracts with the stores. Also, the limitation “franchise” has been deleted.

In response to the provisional double patenting rejection, applicants will be happy to consider a terminal disclaimer when another one of applicant’s applications is patented with conflicting claims. The examiner is requested to designate a patented invention of applicant that would cause such a double patenting rejection.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 22-24 and 32-34 were rejected in the Office Action under 35 USC 112 for indefiniteness. The rejection pointed out only two examples relating to claims 22 and 32, namely the perceived lack of antecedence for the phrase “the different first sets.” However, the antecedence is found in their respective independent claims. For example, claim 19 calls for “a different first set of the independent stores” for “each of a plurality of the supplier master contracts.” Thus, there are a plurality of “different first set.” Accordingly, it is requested that this rejection be reconsidered and withdrawn.

Claims 19-40 were rejected under 35 USC 103 over a seven-way combination of references. This rejection is respectfully traversed because the seven-way reference combination does not make out a prima facie case under the law or under the requirements of the MPEP, and reconsideration is requested.

The rejection uses the Whopping Inventory Task plus the Relevance of each Document as a base reference and then modifies this combination with teachings from four other references plus multiple Examiner’s Official Notices.

The present invention is directed to solving the problems that arise with point of sale data from stores (which is typically keyed in manually, but as the examiner correctly notes, a specific method using keying to enter data is not part of the claim and is not limiting on the claimed invention) in an independent store – independent supplier – independent supply chain manager context. Note that the Whopping Inventory Task plus the Relevance of each Document do not receive point of sale data from stores. Rather, data is received from suppliers in the system and entered into the system. This is because the system is directed to managing suppliers. The rejection states that the Whopping Inventory Task plus the Relevance of each Document system is modified by the examiner to receive point of sale data from stores (discussed in Noori) to make the suppliers more responsive. However, the point of the claim is to manage stores, not suppliers, through the data received from the stores. This point will be brought out as further limitations in the claim are discussed.

One of the problems with manual sales stores is the keying or other entry of data and the errors from that keying or other entry and the resulting incorrect categorization of sold products. This is a particular problem in the claimed context of an independent supply chain where independent stores need not use particular product categories to report sales data. The independent stores and/or distributors in the claimed system rely on the independent supply chain manager to control the relationship with their suppliers through independent supply chain manager-negotiated master contracts that use standard product categories, so that mis-keying and mis-categorization mistakes are a significant problem that, in the claimed system, are not only corrected, but also the fact that a change that was made is reported back or made accessible to the store. This aspect of detecting errors, correcting and then reporting or providing access to the errors back to the data originator is not present in any of the six references or the multiple Examiner Notices. The Noori reference that is relied on in the rejection to teach receiving point of sale data does not have the problem of mis-keying data or data format errors. There is no discussion of mis-categorization of products or format errors. The Noori reference is directed to managing suppliers, not stores. Referring to page 599 cited in the Office Action, it is stated

“The real benefit of EDI are realized when firms go a step further and use this technology to change the way they share information and work together. For example, rather than using demand forecasts, a manufacturer can employ actual

point-of-sale data to drive its production planning. Not only will the manufacturer be more responsive to its customers, this also will lower production costs through lower buffer inventories and more efficient scheduling.”

There is no suggestion of an “independent supply chain manager computer,” or the management by the independent supply chain manager computer of supply chain master contracts between the stores and the suppliers, but not negotiated by the stores. Additionally, the Noori reference is a text discussing recommendations. There is no technical enablement of any system, much less the system claimed by Applicant.

Jost is cited in the rejection for the teaching of having a minimum format for database entries. See Column 57, line 62, cited in the rejection. Jost is a system for automating telephony services. One of ordinary skill in the art of retail supply chain management would not look to Jost as a teaching because Jost is not in the retail supply chain art. Moreover, there is no motivation cited as to why one of ordinary skill in the art would take a teaching on telephony minimum formats and use it to modify the Whopping Inventory Task plus the Relevance of each Document references which are directed to suppliers, not stores, and there is no teaching on how one would make such a modification. Also, the automated telephony signals of Jost do not have the problems of mis-keying and/or mis-categorization of a manual sales operation.

The rejection further cites the IBM Technical Bulletin for a teaching of logging errors. However, the IBM Technical Bulletin teaches a database recovery log containing changes to database records for an on-line recovery of data after I/O or power failures, i.e., a system crash. For example, incomplete writes during a system restart are detected and logged. One of ordinary skill in the art of retail supply chain management would not look to a system for crash data recovery taught by IBM because it is in an unrelated art and the logging involved does not relate to sales data error correction. Moreover, there is no motivation in any of the references for making such a modification, much less a teaching of how such a modification would be made to realize the claimed system.

The overall system of the claimed invention further includes the following claim limitations: “a component for the independent supply chain manager computer receiving

data from the independent suppliers and/or independent stores and/or distributors utilizing the network, the data relating to the supply of the at least one item from the independent suppliers directly or indirectly to the independent stores;” and “a component for automatically comparing at least one contract term in one of the supplier master contracts for the at least one item to received data relating to the supply of the at least one item.” Note that “item” is different from “good” and refers to the components used to manufactures/make the good, such as, in the context of restaurants, a hamburger item or a pickle item. The reference Shavit is cited for a teaching of comparing data received relating to actual purchases to terms in a master contract and sending an alert if there is a discrepancy. But the Shavit reference teaches the use of master contracts between a distributor and a buyer, and describes the buyer placing orders on line against that master contract.

“When ordering against an umbrella agreement, the buyer enters an agreement number and thus defines the terms of the order and may define the shipping address as well.”

Column 13, lines 39-42 of Shavit.

In Shavit there is no subsequent independent negotiation activity between a buyer and a supplier or distributor which negotiation does not involve one of the parties that negotiated the supplier master contract, i.e., the independent supply chain manager is not in the subsequent negotiation even though he/she negotiated the contract terms. Thus, there is no need in Shavit to review actual contract terms against a master contract negotiated by different parties, i.e., negotiated not by the buyer, but rather by an independent supply chain manager. Shavit does not teach “receiving data” on the actual supply of the item and comparing that data to a term in the master contract. Such a comparison operation would make no sense in Shavit because the orders are being made on-line within the Shavit system against the master contract itself, so that there could be no discrepancy. Thus, one of ordinary skill in the retail supply chain art would not see a comparison teaching in Shavit, much less one in the context of the present claimed system using an independent supply chain manager.

The rejection further takes Examiner Notice that it is old in the art to send a notice of a discrepancy. However, there is no teaching provided of detecting a discrepancy between an actual supply transaction between a supplier or distributor and a buyer and terms in a master contract not negotiated by the buyer. So sending a notice of a discrepancy by a reference that does not detect the discrepancy in the first place cannot be obvious. Applicants timely traverse/ challenge this official notice statement, and timely request under MPEP 2144.03 that

this official notice be supported by a citation to a teaching in a prior art reference, and that a suggestion in the prior art be pointed out to provide motivation to combine such Noticed elements with the cited references to realize the claimed combination.

At page 8 of the Office Action it is stated that the database in the Whopper Inventory reference “inherently include data relating to master contracts” and data relating to the assignment of distributors to independent stores. However, no reference to these items are contained in the Whopper Inventory reference, and the Relevance of Each Document and Disclosure reference explicitly states that “Such master contract data was not accessible via a network for use in an automated process.” Thus, this position should be reconsidered and withdrawn. This point has been further emphasized by amendments to claims 19 and 29.

At page 9 of the Office Action, the “Examiner construing the term registering” is traversed. There is no “list of registered users” disclosed.

At pages 9-10 of the Office Action, the “Examiner has modified” proposal is traversed. The Whopper Inventory reference relates only to sales data from suppliers, not stores. Likewise, the Noori reference is directed to managing supplier, not stores, as pointed out above.

With specific reference to Claims 24 and 34, there is nothing in either of the cited references relating to the “converting” step of the claims.

The rejection of claims 39 and 40 further uses Shavit to teach the claim limitation “a component for providing an interface accessible on the network to allow access by each of the plurality of the independent stores to data relating to supplier master contracts associated directly or indirectly with that independent store and to data relating to independent stores in the group.” However, Shavit and the other references cited in the rejection do not teach independent stores getting access to “data relating to independent stores in the group,” i.e., data from other stores in the group or derived from such data. Shavit teaches master contracts between a buyer and a seller. Likewise, Noori teaches providing information electronically from a store to its supplier. Neither Shavit nor Noori teach anything about disclosing access to “data relating to independent stores in the group.”

Multiple Official Notices have been taken for claim elements that are missing in the six references cited. Applicants timely traverse/ challenge these official notice statements, and timely request under MPEP 2144.03 that each instance where official notice is taken be supported by a citation to a teaching in a prior art reference, and that a suggestion in the prior

art be pointed out to provide motivation to combine such Noticed elements with any cited references to realize the claimed combination.

Applicants were surprised by the statement in the Office Action on page 6 that the “components for” limitations would not be given patentable weight, based on the citation of two 40 year old cases that are not followed for that cited point. It has been settled for years that the programming of a general purpose computer creates a special purpose machine, i.e., specific hardware, to perform the particular function set forth. *In re Alappat*, 33 F. 3d 1526, 1545, 31 USPQ 2d 1546, 1558 (Fed. Cir. 1994) (*en banc*) (“We have held that such programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.”), *WMS Gaming Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ 2d 1385 (Fed. Cir. 1999), *In re Bernhart*, 57 CCPA 737, 417 F. 2d 1395, 1399-1400, 163 USPQ 611, 615-16 (CCPA 1969) (“If a machine is programmed in a certain new and unobvious way, it is physically different from the machine without that program; its memory elements are differently arranged.”) The purpose of the “component for” language is to provide coverage whether the computer is hardwired to perform the function or is programmed to perform the function. Thus, reconsideration and withdrawal of this position is respectfully requested.

Applicants traverse the combinations made by the examiner and the imaginative modifications to the base reference made by the examiner as having no basis or motivation in the cited references. Note that the examiner’s frequently cited motivation “to improve supplier responsiveness to the store’s needs” in the Office Action is the type of generic motivation that is not accepted by the courts. In the present claims, discovery of the problem is part of the invention. Specifically, the context and problems faced by the inventors relating to using an independent supply chain manager with an independent supply chain computer to negotiate master contracts where subsequent purchase orders against the master contract would not involve the independent supply chain manager and also the problems associated with the fact that the stores are independent of each other was not recognized in the art of supply chains. It is settled that the person of ordinary skill in the art “thinks along the lines of conventional wisdom in the art and is not one who undertakes to innovate” - *Standard Oil Co. v American Cyanamid Co.*, 227 USPQ2d 293, 298 (Fed. Cir. 1985). It is further submitted that, in order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed

subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required. This has not been shown by the seven reference rejection with the multiple alterations to the references and the multiple examiner notices.

Applicant traverses the rejection of the dependent claims, and reserves the right to argue the substance of those dependent claims on appeal.

The foregoing rejection has used the applicants' disclosure and claims as a blueprint for the rejection. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable consideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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